

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B04

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Date:

August 24, 2011

LEGEND

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Shareholder Group A =

Shareholder Group B =

Business =

Asset =

a =

b =

c =

Dear :

This letter responds to your authorized representative's letter dated June 13, 2011, requesting rulings under sections 355 and 368 and related provisions with respect to a proposed transaction described below (the "Proposed Transaction"). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

Facts

Distributing is the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing has one class of common stock and

one class of preferred stock outstanding. Shareholder Group A and Shareholder Group B together own over a percent of the Distributing common stock. The remainder of the Distributing common stock is owned by employees, directors, and other affiliated and unaffiliated persons, no one of which owns five percent or more of the Distributing stock. The Distributing preferred stock is closely held by members of Shareholder Group A.

Distributing conducts Business itself and through its wholly owned subsidiaries, Sub 1 and Sub 2. Distributing has submitted financial information indicating that Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

For what are represented to be valid business reasons, Distributing proposes to undertake the following steps (the “Proposed Transaction”):

- (i) Distributing formed Controlled and will contribute the assets and liabilities constituting approximately b percent of Business as currently conducted by Distributing to Controlled in exchange for c shares of Controlled common stock (the “Contribution”).
- (ii) Distributing will distribute the c shares of Controlled common stock (representing 100% of the Controlled stock outstanding) to Shareholder Group B in exchange for all of the Distributing common stock held by Shareholder Group B (the exchange ratio will be one share of Controlled common stock for each share of Distributing common stock) (the “Distribution”).

Representations

The taxpayer makes the following representations regarding the Contribution and the Distribution:

- (a) The indebtedness, if any, owed by Controlled to Distributing after the Distribution will not constitute stock or securities.
- (b) The fair market value of the Controlled common stock and other consideration to be received by each Distributing shareholder that is part of Shareholder Group B will be approximately equal to the fair market value of the Distributing common stock surrendered by the shareholder in the exchange.
- (c) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(d) Pursuant to § 355(b)(2)(A) regarding the active conduct of a trade or business requirement, Distributing will treat all members of its separate affiliated group (the “Distributing SAG”) as defined in § 355(b)(3)(B), as one corporation.

(e) The five years of financial information submitted on behalf of Distributing is representative of Distributing’s present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(f) The five years of financial information submitted on behalf of Controlled is representative of Controlled’s present operations, and with regard to such operations, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) Neither Business nor control of an entity conducting Business will have been acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized under proposed § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG will have been the principal owner of the goodwill and significant assets of Business and will continue to be the principal owner of its share of Business following the Distribution. Controlled will be the principal owner of the goodwill and significant assets of its share of Business following the Distribution.

(h) Following the transaction, Distributing and Controlled will each continue, independently and with its separate employees, the active conduct of its share of all the integrated activities of the business conducted by Distributing prior to consummation of the transaction.

(i) The Distribution is carried out for the following corporate business purposes: resolution of shareholder disputes. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(j) The Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both. See § 355(a)(1)(B).

(k) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote or 50 percent or more of the total value of shares of all classes of Distributing stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(l) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(m) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(n) Immediately after the Distribution (taking into account § 355(g)(4)), neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(o) The total adjusted bases of the assets transferred to Controlled by Distributing will equal or exceed the liabilities assumed (as determined under § 357(d)) by Controlled.

(p) The liabilities assumed (as determined under § 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(q) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(r) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Distribution.

(s) Other than trade account indebtedness created in the ordinary course of business through continuing transactions and payables created for any transitional services reflecting the fair market value of providing these services, no intercorporate

debt will exist between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(t) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing's excess loss account with respect to the stock of Controlled, if any, will be included in income immediately before the Distribution (see § 1.1502-19).

(u) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(v) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(w) Distributing and Controlled, and their respective shareholders, will each pay their own expenses, if any, incurred in connection with the Proposed Transaction.

Rulings

Based solely on the information and representations submitted, we rule as follows on the Contribution and the Distribution:

(1) The Contribution followed by the Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).

(2) Distributing will recognize no gain or loss on the Contribution (§§ 357(a) and 361(a)).

(3) Controlled will recognize no gain or loss on the Contribution (§ 1032(a)).

(4) Controlled's basis in each asset received in the Contribution will be the same as the basis of the asset in the hands of Distributing immediately before the Contribution (§ 362(b)).

(5) Controlled's holding period for each asset received in the Contribution will include the period during which Distributing held such asset (§ 1223(2)).

(6) Distributing will recognize no gain or loss on the Distribution (§ 361(c)(1)).

(7) Each Distributing shareholder that is part of Shareholder Group B will recognize no gain or loss (and no amount will be includible in their income) on the receipt of Controlled common stock in the Distribution (§ 355(a)(1)).

(8) The basis of the Controlled common stock received by each Distributing shareholder that is part of Shareholder Group B in the Distribution will be the same as the basis of the Distributing common stock exchanged therefor (§ 358(a)(1)).

(9) The holding period of the Controlled common stock received by each Distributing shareholder that is part of Shareholder Group B in the Distribution will include the holding period of the Distributing common stock surrendered in exchange therefor, provided the Distributing common stock was held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits of Distributing (if any) will be allocated between Distributing and Controlled in accordance with § 312(h), and §§ 1.312-10(a) and 1.1502-33(e)(3).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

(i) Whether the Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether the Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); and

(iv) The federal income tax consequences to both Distributing and Controlled resulting from items recognized by either Distributing or Controlled related to Asset.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)